

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT  
June 3, 2011  
Elisabeth A. Shumaker  
Clerk of Court

In re:

GREG SHRADER,

Petitioner.

No. 11-1213  
(D.C. No. 1:10-CV-01881-REB-MJW)  
(D. Colo.)

**ORDER**

Before **BRISCOE**, Chief Judge, **KELLY** and **HOLMES**, Circuit Judges.

Greg Shrader is pursuing a tort action against several defendants in federal district court. On April 27, 2011, the district court dismissed the claims against defendant Alan Biddinger for lack of personal jurisdiction and awarded Dr. Biddinger his attorney's fees. Mr. Shrader appealed (No. 11-1203). He also filed a petition for a writ of mandamus, which now is before this panel.

The mandamus petition alleges numerous errors by the district court in entering judgment for Dr. Biddinger. Mr. Shrader requests that this court recognize these errors and direct the district court to continue the proceedings against Dr. Biddinger. He argues that he will be greatly prejudiced if he cannot try all his claims against all the defendants at the same time.

It appears that this court may lack jurisdiction to hear appeal No. 11-1203, because the dismissal order is not a final or immediately appealable decision. *See*

*Shrader v. Biddinger*, No. 11-1203, slip op. at 1-2 (10th Cir. May 6, 2011) (unpublished order). But even though No. 11-1203 may be subject to dismissal, that does not mean that mandamus offers Mr. Shrader an alternative remedy. The majority of the issues he seeks to raise may be argued on appeal at the conclusion of the litigation.

“[T]he writ is not to be used as a substitute for appeal, even though hardship may result from delay. . . .” *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964) (citation omitted). Mandamus is available only if the petitioner has “no other adequate means to secure the relief desired.” *In re Dalton*, 733 F.2d 710, 717 (10th Cir. 1984); *see also In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1187 (10th Cir. 2009) (quotation omitted). The availability of an appeal, even if it is a delayed appeal, is an adequate alternative means to secure relief. In *Dalton*, this court concluded that the prospect of a future appeal in another circuit precluded mandamus relief. *See* 733 F.2d at 717. “The remedy of a future appeal from a final judgment in the transferee court is inadequate and therefore justifies mandamus only when the appeal is totally unavailable or when it cannot correct extraordinary hardship because of the particular circumstances.” *Id.* A plaintiff’s strong desire to consolidate claims against all defendants into one action does not demonstrate the requisite extraordinary hardship.

Mr. Shrader also requests that this court order the district court to refer his filings to the United States Attorney for investigation of defendants’ conduct.

Mr. Shrader, however, has not shown the “clear and indisputable” right to such relief that is required to issue a writ of mandamus. *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) (per curiam) (quotation omitted); *In re Cooper Tire & Rubber Co.*, 568 F.3d at 1187 (quotation omitted).

The motion for leave to proceed in forma pauperis is GRANTED. The petition for a writ of mandamus is DENIED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk